



# **JULIE LASSA**

## **STATE SENATOR**

Testimony on Assembly Bill 792  
Assembly Committee on Labor  
Wednesday, March 10, 2010  
10:05 AM  
225 Northwest  
State Capitol

Thank you Chairwoman Sinicki and Committee Members for the opportunity to provide testimony today in support of Assembly Bill 792, the Truth in State Contracting Act.

The use of outside consultants by state agencies has grown steadily over the past 20 years. Consulting contracts can be a cost-effective way to perform the work of state government. However, the use of consultants also raises the challenge of ensuring that consulting firms and their employees are providing high quality products and services in a cost-effective manner for taxpayers.

Unfortunately, there have been a number of high-profile instances in recent years in which inadequate planning, supervision and contracting practices of state agencies have led to higher costs and compromised quality. As government struggles to get the most out of every taxpayer dollar, especially in these difficult times, state agencies must examine their outsourcing practices rigorously. The Truth in State Contracting Act provides tools that will help us ensure that there is greater transparency, accountability and quality in government contracting.

The first step in this process is to gain a better understanding of how private consultants are currently being utilized in state government. Right now when we look at state agency budget documents, we can see how many state employees are working on each program, but we have no idea how many private contractors are also relied upon to provide these services.

For example, in just a two-week span in May 2009, there were 14 instances of state agencies contracting out work despite cost-benefit analyses indicating it would be cheaper to perform the work in-house with state employees. Together these fourteen instances cost taxpayers \$2.6 million more than if the work had been done by state employees. Each of these contracts justifies outsourcing based on short staffing and budgetary constraints. Legislators cannot appropriately address this issue until we have information readily available to verify what is happening in each agency. This bill requires agencies to collect and report in the biennial budget how many contractors they use and the amount of funding for these positions. The information would appear alongside state employee position and funding data. This information will give the legislature our first comprehensive look at contractor usage throughout state government.

Assembly Bill 792 also strengthens cost-benefit analysis requirements to ensure that agencies accurately evaluate the true costs of both state employees and contractors. Currently agencies are required to do cost-benefit analyses on contracts over \$25,000 and may only contract out if doing so is more cost-effective or efficient. However, the definition of the term "efficient" is so vague that agencies can contract out for virtually any reason regardless of whether it costs taxpayers more to do so.

This bill clarifies statutory language to say that state agencies may only contract out if at least two of three conditions are met: when services may be performed more economically, in a more timely manner, or when the contractor can provide certain expertise more efficiently.

You may recall during last spring's budget deliberations that the Joint Finance Committee converted funding for five contracted staff that the Office of the Commissioner of Insurance used to support its information systems to instead support eight full-time project positions—five to provide information management services and three to provide financial management. Not only did this change allow for greater customer service but also saved taxpayers over \$110,000. By passing the Truth in State Contracting, the state will be able to recognize similar savings in all state agencies.

Cost-benefit analyses are only valuable when they are accurate. During a January Joint Audit Committee hearing, representatives from Department of Transportation stated that their cost benefit analyses are “rarely, probably never” accurate, in part because not all costs related to the project are considered in the analyses. We can all agree that cost-benefit analyses should not be futile paperwork, but should accurately reflect all anticipatable costs. Currently, cost-benefit analyses often attach overhead costs to state employees that are not similarly assigned to contractors. This bill requires all costs associated with both state employees and contractors to be included so that a true “apples to apples” comparison can be made. It also prohibits contractors from performing the cost-benefit analyses and it requires the Department of Administration Secretary to certify the accuracy of each cost-benefit analysis. This job should be made easier given the creation of the Division of Legal Services within DOA to specifically monitor contracting issues. Agencies will also be required to perform periodic internal audits so that they can work to improve the reliability of future analyses.

Since AB 792 focuses on reforming contracting practices and saving taxpayer dollars, it also repeals certain cost-benefit analysis requirements that are of no value to agencies. The bill eliminates analyses for services that federal or state law require to be performed by contract or that must be provided per a contract, license, or warranty by an original equipment manufacturer.

Assembly Bill 792 prevents agencies from circumventing a state hiring freeze or furlough by utilizing private consultants or contractors to backfill these state employee positions in that fiscal year. The state shouldn't mislead the public by saying we are cutting jobs and instituting furloughs if agencies are simply diverting these funds to hire contractors. It damages the state's credibility with taxpayers, confounds the budgeting process and demoralizes state employees who lose their jobs or suffer pay cuts. This provision does not apply to contracts funded with federal economic recovery funds. Understanding the demands placed on agencies, the bill also allows requests for exemptions from the Joint Committee on Finance for specific contracts.

Assembly Bill 792 expands the time period to challenge an awarded bid from five days to seven days and allows an appeal and intent to protest to be submitted via electronic notification rather than by mail. The current five-day timeframe for appeals makes it difficult to provide an appropriate review of an awarded bid.

As we have seen from certain IT projects, there is little incentive for some contractors to contain costs as the state usually pays the contractor's invoice regardless of how much it is over budget. You may recall last year the Legislative Audit Bureau found that the Department of Administration spent \$90.9 million on server consolidation through June 2009, which was more than seven times the initial cost estimate of \$12.8 million. We also learned that a contractor's second attempt to install a new computer payroll program for the University

of Wisconsin was millions of dollars over budget and over a year behind schedule. In 2008, the state had to take over the Government Accountability Board's voter registration database program due to the vendor's continued delays, cost overruns and program glitches. In 2007, the Department of Workforce Development suspended its contract for an Enhanced Automated Benefits and Legal Enterprise System after spending more than \$23 million with little to show for it.

To avoid chronic cost overruns and payments for unfinished projects, this legislation prevents a contractor from being paid for costs that exceed their bid amount by more than 10 percent unless the Secretary of DOA approves payment and submits to the Joint Finance Committee his or her rationale for approval. While unexpected situations do arise and contractors should not be penalized for unforeseen circumstances, requiring the DOA Secretary's approval and JFC notification in these instances will help safeguard taxpayers from unnecessary project cost increases.

This bill also has several provisions that protect taxpayers from poor performance and fraud on the part of consultants. DOA will receive evaluations when agencies experience underperformance, and will review those evaluations during the letting of future contracts. DOA's Division of Legal Services would develop standard performance measures and uniform contract language to recoup taxpayer funds from contractors who fail to meet performance standards. The attorney general may bring suit on behalf of the state or local governments to recover any forfeiture as a result of a fraudulent claim for products or services. This language mirrors federal law in terms of fraud involving a federally funded project. And the bill also protects individuals who cooperate with a fraud investigation from retribution.

Although it is clear that outsourcing concerns exist throughout state government, two provisions of this bill specifically target the DOT. The first requires the Department to submit a report to the Joint Finance Committee with recommendations on how the department can improve the efficiency, cost-effectiveness, and timeliness of local road improvement projects. Counties have complained about the extraordinary amount of time and cost of DOT consultants in the Local Road Improvement Program. For example one county in my district reported that the design of an LRIP bridge project done by a state engineer took six months and cost \$5,000 to complete while a similar bridge design by a consultant engineer has cost \$20,000, taken over two years and is still not ready to be let. This provision will help DOT improve the delivery and cost of services that counties and local governments all across this state depend on.

The second DOT-related provision aims to address a safety concern raised in a May Legislative Audit Bureau report that revealed that the thickness and quality of concrete on highway projects has been compromised. This legislation requires DOT state employees to conduct all tests of concrete thickness on its highway improvement projects to ensure that quality standards are met.

The goal of the Truth in State Contracting Act, is to reform the process of state government contracting to ensure that there is greater transparency, more accountability, higher quality and greater cost savings. We owe it to the hard working men and women who strive to provide quality services to state taxpayers everyday, both state employees and employees of private contractors, and to all Wisconsin taxpayers, to use every tax dollar efficiently and effectively. This legislation will do just that.

Thank you Chairwoman Sinicki and Members of the Assembly Committee on Labor.

*AB 792*

The bill before you<sup>1</sup> has a broad reach and broad implications for not only jobs in the State of Wisconsin, but also in the use of our taxpayers' dollars here in this state.

As our state and nation face the largest economic downturn since the great depression, we as legislators are constantly looking for ways to save the taxpayer as much as possible and ensure their money is spent responsibly. Across the state, hard working families will tell you that EVERY penny we save helps. Even in

flourishing economic times, families are still looking at their bottom line to ensure each dollar is spent is used to its full potential.

That is why as the Assembly Vice Chair of the Joint Committee on Audit I was shocked at the findings of the Legislative Audit Bureau when it presented an audit regarding the use of outside contractors over our own state employees on transportation projects around Wisconsin.

The Legislative Audit Bureau's report found that the Department of Transportation used outside contractors in construction projects roughly 63 percent of the time. Initially, I

assumed that this implied that DOT used outside contractors because it was more cost-effective to do so, however, according to this same report, 58 percent, that is MORE THAN HALF THE TIME, the same job, on the same project could have been done cheaper by a DOT staff member. Surely, cost-effectiveness was not the goal.

Now keep in mind, this audit only covered only one state agency. With no way of knowing how far reaching the misuse of the taxpayer dollars went, it became obvious that something needed to be done.

That is why I am proud to stand with many of my colleagues on the Audit committee to bring this bill before you today. Simply put, the Truth In State Contracting Bill brings cost-effectiveness, transparency and accountability to the table when evaluating the use of state dollars for outside contractors.

This bill enhances these goals by implementing three major changes to current practices:

First, this bill enhances cost-effectiveness by streamlining cost benefit analyses so that state contracts go to outside contractors **ONLY IF** it is

more economical and/or more efficient to do so.

Second, this bill increases transparency by specifying what costs MUST be included in the cost-benefit analysis. Ensuring an apples to apples comparison of these contracts, this bill no longer allows outside contractors to eliminate overhead costs from their bids in an effort to beat out state prices. Just because they do not directly incur the costs of using state equipment does not mean such costs should not be stated during the bidding process. If outside contractors use state equipment, costs associated with the use of that



equipment, whether direct or indirect, should be included in their bid.

This brings truth to contracting.

Third and finally, this bill improves accountability by strengthening oversight of state contracts and contracting procedures. With this bill, performance standards will be developed, public and private challenges to contractor bids and practices allowed, and penalties assessed to those who fail to meet these standards.

Now let me be clear. This bill does NOT require the use of ONLY State Employees on projects. Looking back at previous audit numbers, if 58 percent of the jobs completed by outside contractors could have been done less expensively by state employees, that means 42 percent of project jobs save taxpayer money by bringing in these contractors.

THAT is the key to this bill. We are streamlining the state contracting process to ensure that we are evaluating each job properly and using outside contractors ONLY when the bottom line dictates it is best to do so.

I applaud Senator Lassa for all her hard work on this very important bill. I am grateful to the members of this committee for taking the time to give this bill a public hearing and I look forward to continuing to work with the Senator to bring forth a bill that pursues goals of cost-effectiveness, transparency and accountability where it is needed most—here in our state government.

Thank you all again for your time.



# STATE ENGINEERING ASSOCIATION

4510 REGENT STREET  
MADISON, WISCONSIN 53705 (608) 233-4696

November 16, 2004

FOR IMMEDIATE RELEASE

For More Information Contact: Mark Klipstein at (414) 750-1496 or SEA at (608) 233-4696

## State Employees 18% More Cost Effective

MADISON – In a report obtained by the State Engineering Association (SEA), Department of Transportation (DOT) officials determined that contracting out engineering work is much more expensive than having existing state employees do the work. The data shows taxpayers pay 18 percent more when engineering work is contracted out.

Taxpayers have been fleeced for more than \$27.6 million for DOT engineering contracts.

State officials initially refused to release a cost comparison report that shows contracting out is much more expensive. "The state doesn't seem to want to acknowledge that its employees are more cost effective than consultants. Instead, the state continues to shift work away from state employees to higher cost engineering consultants," said SEA President Mark Klipstein. "In a time of tight budgets, the taxpayer cannot afford to have the state continue the wasteful practice of contracting out engineering work. If the state is allowed to continue to expand contracting, more taxpayer dollars will be wasted."

DOT's reorganization plan calls for 365 people to be laid off. "As contracting out continues to increase and more state employees are laid off, we are losing our capacity not only to engineer and design projects, but also to oversee consultants' work and protect the public's interest in safety and quality," added Klipstein. "Consultants and

local officials are concerned that the process for approval will be delayed as fewer employees are available for project review.”

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State Employees 18% More Cost Effective (cont.)

Released November 16, 2004

DOT was tasked to prepare the cost analysis to determine if engineering consultants are more or less expensive than state employees for engineering services. Analysts used accounting methods required by the federal government. The analysis is very thorough and is based on a substantial number of projects, reflecting the total cost to taxpayers. It clearly demonstrates that the taxpayer is better served by cutting back on contracting out for engineering. The report was released due to pressure from state legislators.

“These results are encouraging, but not unexpected. This study will clear up the misconception that private companies are always more efficient than government agencies,” Klipstein said. “That is why we pursued every option to get the full report made public.”

A contradictory report released by the Department of Administration (DOA) is based on only a tiny portion of DOT project costs. It also improperly shifts significant costs from consultant-led projects to projects that are performed by state employees. “DOT stands behind its report. Many wonder if the serious flaws in the DOA analysis are being used to support Governor Doyle’s plan to cut 10,000 state employees, without regard to the cost to taxpayers,” Klipstein said. “The administration has made it clear that state employees will continue to be laid off and their work will be contracted out, regardless of cost or public safety concerns.”

State studies conducted since 1985 consistently show that contracting engineering work costs taxpayers more. “Ironically,” Klipstein points out, “the state has expanded contracting engineering work since the mid-1980s and laid off qualified engineers.”



# WISCONSIN CIVIL JUSTICE COUNCIL, INC.

*Promoting Fairness and Equity in Wisconsin's Civil Justice System*

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**TO: Members, Assembly Committee on Labor**

**FROM: Andrew Cook, on behalf of the Wisconsin Civil Justice Council**

**DATE: March 10, 2010**

**RE: Opposition to AB 792, Relating to False Claims or Qui Tam Actions**

The Wisconsin Justice Council (WCJC) was formed in early 2009 to represent Wisconsin business interests on emerging civil litigation issues before the Legislature. WCJC's primary goal is to achieve fairness and equity, reduce costs, and enhance Wisconsin's image as a place to live and work.

WCJC opposes AB 792 because it encourages abusive litigation by providing incentives for private parties to bring lawsuits on behalf of the state. Moreover, because existing laws provide meaningful avenues for the state to prosecute those who file false claims, AB 792 will do little to curtail government fraud.

### **What Are "False Claims" or *Qui Tam* Laws?**

Spurred by financial incentives in the federal Deficit Reduction Act of 2005, states have considered adopting "false claims" or *qui tam* laws targeting Medicaid fraud.

These laws generally authorize private civil actions alleging a person knowingly presented a false claim and deceived the state for the purpose of a getting a claim paid. A "claim" includes any request for money, property, or services made to any officer, employee, or agent of the state, or any contractor who is reimbursed by the state.

A person bringing a *qui tam* action behalf of the government can typically receive a significant percentage of the amount recovered for the state (up to 25 percent under most laws).

False claims laws are a favorite tool of plaintiffs' lawyers to sue companies that allegedly commit fraud against federal and state health care programs through their marketing practices. These laws essentially turn private individuals into bounty hunters for the state, often with multi-million dollar rewards.

### **Current Wisconsin Law**

As part of the 2007-09 Budget, the Wisconsin Legislature adopted a false claims law applicable only to fraud involving medical assistance. (Wis. Stat. § 20.931)

### **AB 792 Extends Wisconsin's False Claims Act and Rewards Trial Attorneys**

The bill would significantly extend Wisconsin's current false claims law to *any* alleged fraudulent request for money or services made to any officer or agent of the state, or to *any* contractor providing services to the state. Under AB 792, a person would violate the Act if he/she "knowingly makes, uses, or causes to be made or used a false record or statement to obtain approval or payment of a false claim."

AB 792 allows private person (called a "relator") to bring a civil action on behalf the government. The person bringing the claim must serve the attorney general a copy of the complaint and disclose all material evidence and information the person possesses.

(over)

If the attorney general proceeds with the case and the defendant is found to have submitted a false claim, the civil penalties are significant:

- Treble damages – three times the amount of damages sustained by the state.
- Penalties -- \$5,000 to \$10,000 for each violation.
- The private party who filed the lawsuit is entitled to significant compensation:
  - 15 percent to 25 percent of the proceeds of the action or settlement of the claim.
  - Plus reasonable attorneys' fees and costs.

#### **Allows Lawsuits Based on "Publicly Available Information"**

- AB 792 differs significantly from federal law in that it allows private parties to bring lawsuits based on publicly available information.
- Thus, a private party can bring a lawsuit based on the public disclosure of allegations or transactions in government reports or hearings, or through simply through the media. Most *qui tam* laws preclude such lawsuits unless the private party bringing the lawsuit is the "original source" of the information.
- Under federal law, the "original source" is an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the government before filing an action. Under federal law, a private party's failure to qualify as an original source will result in dismissal of the case.
- As one federal court has noted, private parties must not be "opportunistic late-comers who add nothing to the exposure of the [alleged] fraud." See *United States ex rel. Rabushka v. Crane Co.*, 40 F.3d 1509, 1511 (8<sup>th</sup> Cir. 1994).
- The absence of this prohibition in AB 792 will encourage opportunistic lawsuits by parties who have not direct knowledge of the case.

#### **Allows Plaintiffs to Sue Up to 10 Years After the Alleged Fraud Occurred**

- AB 792 provides a 10-year statute of limitations, which is extremely too long. (By contrast, the statute of limitations under the federal False Claims Act is six years.)

#### **WCJC Opposes AB 792 Because it Encourages More Lawsuits but Does Nothing to Help Prevent Fraud**

The proposed false claims bill will encourage more abusive litigation by trial attorneys. This is especially the case given that AB 792 fails to prohibit private lawsuits based on publicly available information rather than only allowing the "original source" to file the lawsuit.

Wisconsin currently can protect against false claims through contract law and prosecution of contractors. Therefore, the *qui tam* provision in AB 792 is completely unnecessary.

Based on the foregoing, WCJC respectfully requests that the Legislature remove the false claims provision from AB 792.

## State Engineering Association

The cost of State government is very important to the taxpayer, yet the government continues to spend more, and get less by outsourcing many of the functions government previously did. The size of State government is not the number of State employees it has, but the cost of providing the services that government is responsible for.

Some agencies in State government are being whittled down to becoming oversight only agencies. We are only one work force generation away from being there. If this trend continues, State employees won't have the experience to do many of the technical job tasks themselves, and there won't be any alternative but to contract out the work. Then the contractors will have a monopoly, and you know what happens when someone has a monopoly. The costs skyrocket!

In WISDOT the Southeast Region is the first Region to model an oversight only agency. They have set that goal by the end of this year. They are making the changes today as we attend this hearing. The current administration is making these changes on its way out, I believe, so it will be that much harder to reverse or change in the future.

The taxpayers want a competent and professional work force looking out for their needs and long term goals. If you put the needs of the taxpayer in the hands of profit motivated contractors, the needs the taxpayers will always come in second to profit.

By doing agency work in-house, experienced agency staff are able to train and mentor the next generation watching our infrastructure needs. This institutional knowledge and functionality is critical for Wisconsin agencies to remain strong and produce the results the taxpayers have come to expect.

*AB792*

I support this bill and efforts to strengthen government accountability and transparency along with cost effective delivery of services. However, I don't think this bill is the only way to accomplish this.



I believe the legislature must act to protect the taxpayer interest by setting up performance standards and expectations for the agencies.

1. Agencies should be staffed to perform a majority of the tasks the government formed the agency for. No more than 30 percent (~~if any is desired~~) of an agencies workload should be outsourced. It is critical that staff maintain institutional knowledge and training. Especially, when staffed agencies have been documented to deliver services more than 18 percent more cost effectively. That is what the detailed DOT study found in 2004 when it compared costs of internal staff to outsourced staff. If we ran agencies purely like a business, no business would spend 18 percent more to get the same service they could provide with their own staff. It is simply stupid.
2. If agencies are out of balance then they should be a requirement in the next two to three budgets (4-6) years to transition back to the proper balance with no more than 30 percent outsourced.
3. When agencies percentages get too large in outsourcing then they begin eating up staff work time on oversight; more oversight means they can do less work; less work getting done more outsourcing; more outsourcing means less work getting done. It is a self fulfilling action to lead to more and more outsourcing.
4. We should not have consultants overseeing consultants. It should be prohibited. It is the "fox guarding the hen house" and simply not in the taxpayer interest.
5. Any outsourcing more than 30 percent leads to shadow government and begins down the path of erosion of public services and government transparency. For example, state employees pay and wages are openly posted on the Journal Sentinel online Data on Demand. But do you see consultant contract wages posted there ? No.
6. Privatization has been ongoing now for about 15 years and costs of government continue to rise. We have not saved money with privatization

it is a failed direction and taxpayers cannot afford continued waste and mismanagement of their state agencies. It must be stopped now.

There should be time frames set in this bill to make the agencies reduce ~~the~~ to prescribed limits the amount of work they can contract out,

There should also ~~be~~ ~~should~~ be requirements that agencies reduce their vacancy rates to ~~2~~ 2% or less, before they can contract out services. ~~unless the agency has no~~ with the exception of unique services that the agencies have no expertise <sup>requires specialized</sup> or equipment the agency doesn't have, in,



**Testimony of Ken Weaver - AFSCME Council 24  
Before the Assembly Committee on Labor  
March 10<sup>th</sup>, 2010**

My name is Ken Weaver and I have over 30 years with the DOT as an Engineering Technician. I am also President and Chief Steward of WSEU Local 758, the Statewide Union for all 5 regions within the DOT and I also serve as AFSCME Council 24's chair of the Outsourcing Committee.

I want to thank the committee members for allowing public testimony today on Assembly Bill 792 authored by my Representative, Andy Jorgensen, and Senator Julie Lassa in the Senate.

As chair of our Outsourcing Committee, I have personally reviewed contracts and cost benefit analysis from most of the agencies in state government that choose to outsource WSEU positions and workloads. Since the early 90's I have fought to bring light to the state's outsourcing antics because of the waste of tax dollars most outsourcing schemes represent.

As a 30 year DOT employee I have seen the DOT degenerate from a well staffed and managed agency that put the taxpayers needs first when it came to delivering construction projects on time and within budget, to a government entity that caters to the consultant industry regardless of the costs involved.

A few years ago AFSCME worked with Senator Cowles and Representative Gottlieb to create 2005 Act 89. Act 89 created a Uniform Cost-Benefit Analysis process to require agencies to implement a more true comparison of the costs involved with delivering design and construction services to the taxpayers.

Act 89 charged DOA and the DOT with the task of creating the rules that would shape the cost-benefit analysis process. The result was a process that gave us a wealth of information about the state's contracting out process, and a glimpse into how good of a steward DOT and other agencies are being with taxpayers dollars.

Our outsourcing committee has created a spreadsheet that we have shared with you today that details how the DOT goes thru the motions of cost analysis, yet resorts to always outsourcing regardless of the cost paid by Wisconsin's taxpayers.

Our committee has obtained the Uniform Cost-benefit Analysis (UCBA) for 23 randomly chosen construction and design projects being performed in 2009. We also obtained the copies of the final contracts negotiated with the consultant firm chosen by the DOT to perform the work on the same 23 projects using the State's Open Records Law.

Using the DOT's own information compiled from the UCBA's and the contracts represented we have created the spreadsheet you have. It details the UCBA estimate for the number of hours to perform the project and the estimated cost per hour.

From the DOT's signed contract with the consultant we have detailed the number of hours required to perform the contract and used the cost of the contract divided by the hours to show the real per hour cost of the signed contract. The red font in the column labeled "% over UCBA" shows the percentage over the cost analysis estimate of each contract. It ranges from 2% to over 79% more than the cost analysis estimated.

In addition we have used the in-house staff per hour estimate from the DOT's UCBA and multiplied it by the number of hours agreed to in the contract signed by the DOT with the chosen consultant firm. The final column labeled "Using In-House" shows what a real "apples to apples" comparison of consultants vs. in house costs Wisconsin's taxpayers.

Using the DOT's own data we have shown that the DOT would have saved \$1,483,552.54 if it used in-house staff to staff 22 of the 23 projects we reviewed using our simple spreadsheet.

The average savings across these 22 projects is \$67,434 per project. Using that average savings for the 350+ projects the DOT has outsourced to consultant firms, we believe \$23,601,971 may be saved if the DOT used in-house staff to perform the same duties.

I have all the consultant contracts signed by the DOT and the corresponding UCBA devised by the DOT and can provide copies to anyone interested in checking our figures.

In short our spreadsheet details how, despite the information available to them under Act 89, the DOT sugarcoats the real cost of using profit motivated outside consultant firms. AB 792 takes the next step beyond the information gathering provided by Act 89, and creates the changes in law necessary to assure the taxpayers benefit from the cost savings the UCBA process can provide when performed accurately.

We believe that the DOT has lost the ability to make long term business choices in the best interest of Wisconsin's taxpayers. To consistently make decisions that cost a state agency more than using in-house staff makes no sense in this fragile economy. It is time to begin restoring front-line positions in the DOT, take a long look at the top-heavy management and re-deploy many of those positions back into the production side of DOT operations.

Outsourcing does have a place in some situations. Blindly outsourcing without concern of the taxpayer's dollars must be stopped and the voices in the DOT that fight against the waste will not be going away. They will only become louder and more numerous as light exposes DOT outsourcing to reality.

Wisconsin's taxpayers need AB 792 now more than ever.

Thank you for your attention to this issue.

Respectfully submitted,

Ken Weaver  
AFSCME/WSEU Local 758  
451 London Rd.  
Deerfield, WI 53531  
608-764-5269



### Cost Benefit Analysis Financial Information

Please see line by line instructions at:

<http://vendornet.state.wi.us/vendornet/da/forms/CBAInstructions.doc>

To request Cost Benefit Analysis approval, please complete DOA-3821a CBA Project Summary (Word) and DOA-3821b CBA Financial Information (Excel). Route the documents for approval within your agency as defined by your agency policy. Submit approved documents to the State Bureau of Procurement at: [DOAcba@wisconsin.gov](mailto:DOAcba@wisconsin.gov) and appropriate Union Representatives.

Only enter information in the areas shaded yellow. Please do not alter formulas in blue cells. If more room is needed for any line number, insert new rows in the middle of the shaded area so the formulas are still valid. The Cost Benefit Analysis Summary at the end is populated with the totals from each of the sections below.

Department:

Department of Children and Families

Date:

1/11/10

Agency Tracking Number

CFJ0017

Contact:

Jill Jokela

Phone Number:

608-261-4579

Project/Program Title

Programmer Analyst 3

### Part One - State Employee Costs

Line 1, Part A: Identify all permanent state staff needed to carry out the function described in this CBA. SEE INSTRUCTIONS FOR DETAILED GUIDANCE.

Job Classifications from OSER - Permanent Positions		Hourly Pay	Number of Staff Needed	Annual Hours	Total Year 1	Total Year 2	Total Year 3	Total Year 4	Total Year 5
IS Systems Devmnt Services Specialist		\$33.47	3	2080	\$208,828	\$213,004	\$217,264		
					\$0				
					\$0				
					\$0				
					\$0				
					\$0				
					\$0				
Sub-total State Employee Wage and Salary Costs for Line 1 Part A Permanent positions					\$208,828	\$213,004	\$217,264	\$0	\$0

**Line 1, Part B:** Identify all implied term staff needed to carry out the function described in this CBA. SEE INSTRUCTIONS FOR DETAILED GUIDANCE.

	Number of Staff Needed	Annual Hours	Total Year 1	Total Year 2	Total Year 3	Total Year 4	Total Year 5
Hourly Pay							

[illegible]

\$0	\$0	\$0	\$0
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\$208,828	\$213,004	\$217,264	\$0	\$0
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**Years 2 and 3 include 2% increases.**

Please describe your assumptions for the total number of Permanent and L TE staff requested and designated classifications. Also describe your assumptions for any proposed annual increases.

Line 1, Part C: The Leave Adjustment Factor accounts for benefits that a state employee earns but does not use. A standard 15% was calculated by OSER based on its survey of state agencies. SEE INSTRUCTIONS FOR DETAILED GUIDANCE.

	Hourly Pay	Number of Staff Needed	Leave Factor Hours at 15%	Total	Total	Total	Total	Total
				Year 1	Year 2	Year 3	Year 4	Year 5
IS Systems Devmnt Services Specialist	\$33.47	3	312	\$31,324	\$31,951	\$32,590		
	\$0.00	0	0	\$0				
	\$0.00	0	0	\$0				
	\$0.00	0	0	\$0				
	\$0.00	0	0	\$0				
	\$0.00	0	0	\$0				
	\$0.00	0	0	\$0				

Total State Employee Leave Adjustment Factor Costs for Line 1 Part A \$31,324 \$31,951 \$32,590 \$0 \$0

Years 2 and 3 include 2% increases  
Please describe your assumptions. Documentation is only needed if you vary from the State average leave factor.

Line 2: Fringe calculated at appropriate percentage of wages included in Line 1 Part A and Part B. Contact your budget office for the appropriate rate. SEE INSTRUCTIONS FOR DETAILED GUIDANCE.

	Total	Total	Total	Total	Total
	Year 1	Year 2	Year 3	Year 4	Year 5
Benefit Rate for Permanent positions	47.06%	47.06%	47.06%		
Benefit Rate for LITE positions					
Benefit Amount for Permanent positions	\$98,274	\$100,240	\$102,245	\$0	\$0
Benefit Amount for LITE positions	\$0	\$0	\$0	\$0	\$0
Total Fringe Benefits Costs for Line 2	\$98,274	\$100,240	\$102,245	\$0	\$0







**Line 6, Contract Price:** You must identify the cost of this contract in either a lump sum amount or by modeling the positions used when calculating the state employee costs. SEE INSTRUCTIONS FOR DETAILED GUIDANCE.

**Position description or  
Project Description**[illegible]

\$370,440	\$370,440	\$370,440	\$0	\$0
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**Line 7. Contract Monitoring and Contract Creation Costs:** These costs include all activities that take place from the time a decision is made by the program area to contract out until the contract is fully executed and final payment is made. SEE INSTRUCTIONS FOR DETAILED GUIDANCE.

[illegible]

**Year one includes recruitment, interviewing, change orders, dispute resolutions, invoices, etc.**



# Part Three - Cost Benefit Analysis Summary

Do not alter information on this page. You should review each summary item to ensure that previously entered data is accurately represented.  
SEE INSTRUCTIONS FOR DETAILED GUIDANCE.

Department:  
Department of Children and Families

Date:  
1/11/10

Agency Tracking Number  
CFJ0017

Contact:  
Jill Jokela

Phone number  
(608-261-4579

Project/Program Title  
Programmer Analyst 3

## State Employee Cost Compared to Contracting Out for Services Costs

### Contract Length

#### State Employee Costs

- Line #
1. Wage and Salary Costs
  2. Fringe Benefits Costs
  3. Administrative Overhead Costs
  4. Other Operating Costs

5. Total State Employee Costs  
(Automatic Sum of Lines 1 through 4)

#### Contracting Costs

6. Contract Price
7. Contract Monitoring
8. One-Time Conversion Costs
9. Total Contract Costs  
(Automatic Sum of Lines 6 through 8)

#### Cost Analysis (Automatic calculations.)

10. Average annual Savings/(Cost)
11. Average annual State Employee Costs
12. Average Annual Savings/Cost Percentage



	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Wage and Salary Costs	\$240,152	\$244,955	\$249,854	\$0	\$0	\$734,961
2. Fringe Benefits Costs	\$98,274	\$100,240	\$102,245	\$0	\$0	\$300,759
3. Administrative Overhead Costs	\$57,450	\$57,450	\$57,450	\$0	\$0	\$172,350
4. Other Operating Costs	\$0	\$0	\$0	\$0	\$0	\$0
<b>5. Total State Employee Costs</b>	<b>\$395,876</b>	<b>\$402,645</b>	<b>\$409,549</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,208,070</b>



	Year 1	Year 2	Year 3	Year 4	Year 5	Total
6. Contract Price	\$370,440	\$370,440	\$370,440	\$0	\$0	\$1,111,320
7. Contract Monitoring	\$2,859	\$1,823	\$1,859	\$0	\$0	\$6,541
8. One-Time Conversion Costs	\$0	\$0	\$0	\$0	\$0	\$0
<b>9. Total Contract Costs</b>	<b>\$373,299</b>	<b>\$372,263</b>	<b>\$372,299</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,117,861</b>

\$30,070

\$402,690

7.47%

## AFT-WISCONSIN COUNCILS

Graduate Employees  
Higher Education  
K-12 Teachers  
PSRP  
State Employees  
WTCS  
Retiree Chapter

Thank you, Chairperson Sinicki, and members of the Labor Committee for giving me the opportunity to speak to you today about the state's outsourcing practices. My name is Scott Spector, and I am the Government Relations Director for AFT-Wisconsin. AFT-Wisconsin represents 17,000 professional public employees working throughout the state, including thousands of state employees working at every state agency. Our members have first-hand experience with current outsourcing practices, since we represent employees who work side-by-side with private contractors, often times doing exactly the same work. We also represent procurement agents and other employees directly involved in bidding and contracting, and who understand how the process works. The members of our union strongly support AB 792 and we thank Senator Lassa and Representative Jorgensen for their hard work on this issue.

AFT-Wisconsin believes that many of the proposals included in this bill are common-sense reforms that will ensure proper stewardship of taxpayer dollars. Such reforms include:

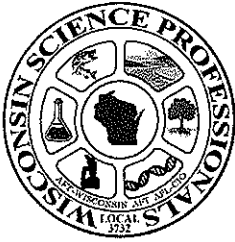
- Requiring agencies to disclose the number of contractors that are employed and the cost of those contractors. This will allow legislators and the public to see how dollars are being spent while creating more accountability. Currently, agencies are only required to disclose the number of state employees they employ.
- Requiring state agencies to file an evaluation with DOA if outsourced projects are unsatisfactory. Such evaluations can be used in determining future contract awards. Currently, there is no meaningful evaluation of the performance of private contractors. Moreover, agencies are not able to track contractors' previous work products for the state, which allows poor performers to continue to receive state dollars.
- Allowing projects to be outsourced only if they cannot be done by state employees, it is more cost-efficient to use private contractors, or the project time-frame is too short to warrant the hiring of state employees. Agencies' first responsibility should be saving taxpayers' money; however, all too often agencies decide to outsource work because it is easier than hiring a state employee, even when that state employee would be less expensive than a private contractor.

I also wanted to take a few minutes to address some concerns that have been brought up about AB 792.

- Some have argued that comparing the costs of private contractors to state employees is an unfair comparison because state employees stay on after a project is completed, while contractor costs expire at the end of the contract. This argument is flawed for a number of reasons. First, oftentimes contracts are renewed and contractors end up staying with the state for years, and in some cases even decades. We have heard stories from members who have worked with contractors who have been with the state for more than 15 years. Secondly, often times the type of work that agencies need to outsource is not a one-time project, but rather on-going work. For example, over the past 12 months our union has received notification of the state's intent to hire 116 contractors to do work as "Systems Development Services Specialists." For each project, the state needs to hire a new contractor, whereas if a state employee were hired, that person would be on staff permanently to do this type of work and would limit the need to contract out in the future.
- We have also heard arguments that state employees do not have the proper skill sets to do some of the work that private contractors do; however, if you look at the nine most frequent positions the state has contracted for over the past year, the state has hired 302 contractors for these nine job types, and our union alone represents over 1250 employees that perform the exact same work for the state. Clearly our members have the skills to do the work. So while the state is outsourcing this work for a greater cost to the taxpayers, state employees are ready and able to do the work at a cheaper cost to the state. If there is work that our members cannot perform, we do not object to finding someone who can; however, if the work represents a long-term need of the agency, they should be investing in state employees who can do the work.
- Finally, some have argued that agencies don't have enough staff to do the work. We couldn't agree more. As of six months ago, 8% of all state positions were vacant, and I'm sure that number has only increased since then. If agencies have projects that need to get done, their first step should be filling vacant positions within their agencies. To use understaffing as justification to spend more money on private contractors doesn't add up for taxpayers. If money exists to pay private vendors, the money should exist to pay state workers, especially if it saves money.

The 4,000 public employees that AFT-Wisconsin represents are not asking for special treatment; we are asking for proper stewardship of state dollars. We believe that AB 792 provides some much-needed oversight and accountability of the procurement process to ensure proper usage of state dollars.

As agencies decide how to move forward on a project, we ask for a fair evaluation of the costs between using state staff and outsourcing the project. If it's cheaper to outsource, agencies should outsource; however, if it is cheaper to keep the work in-house, state employees should be trusted to get the job done. Thank you.



# Wisconsin Science Professionals

[www.wspunion.org](http://www.wspunion.org)

6602 Normandy Lane Madison, WI 53719 T: 608-662-1444 F: 608-662-1443  
800-362-7390

Good morning, and thank you for taking time to hear my testimony today. My name is Gary Steffen, and I'm the president of the Wisconsin Science Professionals, a union comprised of more than one thousand professional scientists working as state employees in Wisconsin. On their behalf, I strongly encourage you to support AB792.

Hundreds of science professionals have witnessed the harmful effects of misguided outsourcing practices; more importantly, the citizens of Wisconsin continue to suffer from such practices, both directly and monetarily. I'd like to share two examples with you of positions that are being systematically outsourced.

## **1. Foresters/timber sales**

The DNR's Forestry program recently began outsourcing the sale of public timber to private contractors. There have been numerous problems with this project even before its inception:

- A pilot by the Forestry program to contract administration of the timber harvest on the Flambeau State Forest did not show any cost savings to the state by using a private forester. In fact, the study showed that the state foresters spent as much time overseeing the contract as the contractor did. The DNR has not examined the cost of doing this work with existing employees. Because there are no regulations to ensure future evaluations of this program, taxpayer money may continue to be wasted on this high-cost, low-efficiency use of private contractors.
- Revenues from timber sales are paid into the state treasury to the credit of the Forestry Seg account in the conservation fund.. Currently, the state uses the revenue generated from the contracted timber sales to cover the additional cost of the contractors, and thus chips away at the Forestry account's seed money.
- There is also a question of employee motivation. Our public foresters take their responsibilities as stewards of our public lands very seriously. Private corporations, on the other hand, are motivated by profit. Since contractors receive a portion of timber sales, it is likely that established sales will be increased, leading to over-harvesting in environmentally sensitive areas.



## 2. Pharmacists

Many of you on this committee will recall the bipartisan effort to prevent the outsourcing of DHS pharmacists in 2009. While we were successful in blocking these attempts at DHS, pharmacist positions in the Department of Corrections continue to be outsourced, resulting in a number of issues:

- As is often the case, the cost of private contractors far exceeds that of the state employees who perform the same work. Like the forester positions I mentioned earlier, there is **no cost savings** to Wisconsin taxpayers to outsource these positions, due in no small part to the fact that corporate profit margins are considerably higher than the salaries of state employees.
- Unlike many pharmacists in the private sector, DOC pharmacists are highly specialized, “full-service” employees. The high turnover rates associated with outsourced positions present a very real professional and financial liability to the State of Wisconsin.

In addition to cost savings that would be realized by outsourcing reform, the citizens of Wisconsin will benefit from the high value of a stable and accountable state employee workforce. Unlike private contractors, state employees are a valuable long-term investment in the infrastructure of our state. Building our workforce keeps accountability, efficiency and competence in the public sector, and keeps jobs in Wisconsin.

The challenges posed by outsourcing state employees’ work are many, and the reforms proposed in AB 792 will make important strides in addressing these challenges. On behalf of the thousands of professional public employees represented by the Wisconsin Science Professionals, I urge you to pass this important, forward-thinking legislation.

Thank you, and I’ll now be happy to address any questions you may have.